

FIRST REGULAR SESSION

# SENATE BILL NO. 431

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Read 1st time Marrch 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1894S.011

## AN ACT

To amend chapter 407, RSMo, by adding thereto three new sections relating to direct mail marketing, with penalty provisions and an effective date.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 407, RSMo, is amended by adding thereto three new sections, to be known as sections 407.2100, 407.2105, and 407.2110, to read as follows:

**407.2100. This act shall be known and may be cited as the "Do-Not-Offer Statewide Registry Act".**

**407.2105. 1. As used in this section, the following terms shall mean:**

(1) "Customer", any natural person who is age seventy or older, a resident of this state and who is or may be required to pay for or to exchange consideration for goods and services offered through direct mail marketing;

(2) "Direct mail marketer", any person who, for financial profit or commercial purposes in connection with direct mail marketing, mails solicitations for the sale of goods or services to a customer when the customer is in this state or any person who directly controls or supervises the conduct of a direct mail marketer. For the purposes of this section, "commercial purposes" shall mean the sale or offer for sale of goods or services. Direct mail marketer shall include, but not be limited to, a credit card company which engages in the issuance of any credit card, credit plate, charge plate, courtesy card, or other identification card or device which may be used to obtain a cash advance or a loan or credit or to purchase or lease property or services on the credit of the issuer or of the holder; and shall not include a debit

18 card issued by a bank for the transfer, deposit and withdrawal of funds  
19 to and from a customer's bank account;

20 (3) "Direct mail marketing", any mailing which contains  
21 solicitations for the sale of goods or services and is directed to a  
22 customer at his or her residence within this state by personal delivery;

23 (4) "Doing business in this state", mailing or causing to be mailed  
24 any direct mail marketing solicitation delivered to a residence by  
25 means of personal delivery from a location in this state or from a  
26 location outside of this state to a customer residing in this state;

27 (5) "Goods and services", any goods and services, and shall  
28 include any real property or any tangible personal property or services  
29 of any kind;

30 (6) "Person", any natural person, association, partnership, firm,  
31 limited liability company, corporation and its affiliates or subsidiaries  
32 or other business entity;

33 (7) "Unsolicited direct mail marketing", any direct mail  
34 marketing mailing other than a mailing:

35 (a) To any customer with that customer's prior express invitation  
36 or permission;

37 (b) By or on behalf of any person or entity with whom a customer  
38 has had a business contact within the past one hundred eighty days or  
39 a current business or personal relationship;

40 (c) By or on behalf of an entity organized pursuant to Chapter  
41 501(c)(3) of the United States Internal Revenue Code, while such entity  
42 is engaged in fundraising to support the charitable purpose for which  
43 the entity was established provided that a bona fide member of such  
44 exempt organization makes the contact;

45 (d) By or on behalf of any entity over which a federal agency has  
46 regulatory authority to the extent that:

47 a. Subject to such authority, the entity is required to maintain  
48 a license, permit, or certificate to sell or provide the merchandise being  
49 offered; and

50 b. The entity is required by law or rule to develop and maintain  
51 a do-not-offer statewide registry database;

52 (e) By a natural person responding to a referral, or working from  
53 his or her primary residence, or a person licensed by the state of  
54 Missouri to carry out a trade, occupation or profession who is setting

55 or attempting to set an appointment for actions relating to that  
56 licensed trade, occupation or profession within the state or counties  
57 contiguous to the state.

58       2. The attorney general shall establish and provide for the  
59 operation of a database to compile a list of addresses, post office boxes,  
60 or other locations of mail delivery of customers who object to receiving  
61 direct mail marketing. The attorney general shall have such database  
62 in operation no later than July 1, 2012.

63       3. No later than January 1, 2012, the attorney general shall  
64 promulgate rules and regulations governing the establishment of a do-  
65 not-offer statewide registry database as he or she deems necessary and  
66 appropriate to fully implement the provisions of sections 407.2100 to  
67 407.2110. The rules and regulations shall include those which:

68       (1) Specify the methods by which each customer may give notice  
69 to the attorney general or its contractor of his or her objection to  
70 receiving such direct mail marketing or revocation of such  
71 notice. There shall be no cost to the customer for joining the database;

72       (2) Specify the length of time for which a notice of objection  
73 shall be effective and the effect of a change of address on such notice;

74       (3) Specify the methods by which such objections and  
75 revocations shall be collected and added to the database;

76       (4) Specify the methods by which any person or entity desiring  
77 to send direct mail marketing will obtain access to the database as  
78 required to avoid sending direct mail marketing to customers included  
79 in the database, including the cost assessed to that person or entity for  
80 access to the database;

81       (5) Specify such other matters relating to the database that the  
82 attorney general deems desirable.

83       4. If the Federal Communications Commission establishes a  
84 single national database of addresses of customers who object to  
85 receiving direct mail marketing, the attorney general shall include that  
86 part of such single national database that relates to Missouri in the  
87 database established pursuant to this section.

88       5. Information contained in the database established pursuant  
89 to this section shall be used only for the purpose of compliance with  
90 section 407.2100 and this section or in a proceeding or action under  
91 section 407.2110. Such information shall not be considered a public

92 record under chapter 610.

93           6. In April, July, October, and January of each year, the attorney  
94 general shall be encouraged to obtain subscription listings of customers  
95 in this state who have arranged to be included on any national no-  
96 direct mail marketing list and add those names to the do-not-offer  
97 statewide registry.

98           7. The attorney general may utilize moneys appropriated from  
99 general revenue and moneys appropriated from the merchandising  
100 practices revolving fund established in section 407.140 for the purposes  
101 of establishing and operating the do-not-offer statewide database.

102           8. Any rule or portion of a rule, as that term is defined in section  
103 536.010 that is created under the authority delegated in sections  
104 407.2100 to 407.2110 shall become effective only if it complies with and  
105 is subject to all of the provisions of chapter 536, and, if applicable,  
106 section 536.028. This section and chapter 536 are nonseverable and if  
107 any of the powers vested with the general assembly pursuant to chapter  
108 536, to review, to delay the effective date, or to disapprove and annul  
109 a rule are subsequently held unconstitutional, then the grant of  
110 rulemaking authority and any rule proposed or adopted after August  
111 28, 2011, shall be invalid and void.

          407.2110. 1. The attorney general may initiate proceedings  
2 relating to a knowing violation or threatened knowing violation of  
3 sections 407.2100 to 407.2110. Such proceedings may include, without  
4 limitation, an injunction, a civil penalty up to a maximum of five  
5 thousand dollars for each knowing violation and additional relief in  
6 any court of competent jurisdiction. The attorney general may issue  
7 investigative demands, issue subpoenas, administer oaths and conduct  
8 hearings in the course of investigating a violation of section 407.1098  
9 or 407.1104.

10           2. Any person who has received more than one direct mail  
11 marketing solicitation within any twelve-month period by or on behalf  
12 of the same person or entity in violation of sections 407.2100 to 407.2110  
13 may either:

14           (1) Bring an action to enjoin such violation;

15           (2) Bring an action to recover for actual monetary loss from such  
16 knowing violation or to receive up to five thousand dollars in damages  
17 for each such knowing violation, whichever is greater; or

18           **(3) Bring both such actions.**

19           **3. It shall be a defense in any action or proceeding brought**  
20 **pursuant to this section that the defendant has established and**  
21 **implemented, with due care, reasonable practices and procedures to**  
22 **effectively prevent direct mail marketing solicitations in violation of**  
23 **sections 407.2100 to 407.2110.**

24           **4. No action or proceeding may be brought under this section:**

25           **(1) More than two years after the person bringing the action**  
26 **knew or should have known of the occurrence of the alleged violation;**  
27 **or**

28           **(2) More than two years after the termination of any proceeding**  
29 **or action arising out of the same violation or violations by the state of**  
30 **Missouri, whichever is later.**

31           **5. A court of this state may exercise personal jurisdiction over**  
32 **any nonresident or his or her executor or administrator as to an action**  
33 **or proceeding authorized by this section in the manner otherwise**  
34 **provided by law.**

35           **6. The remedies, duties, prohibitions, and penalties of sections**  
36 **407.2100 to 407.2110 are not exclusive and are in addition to all other**  
37 **causes of action, remedies and penalties provided by law.**

38           **7. No provider of direct mail marketing service shall be held**  
39 **liable for violations of sections 407.2100 to 407.2110 committed by other**  
40 **persons or entities.**

41           **8. Sections 407.2100 and 407.2105 and this section shall take**  
42 **effect on July 1, 2012.**

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